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Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his third report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in June 2018. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 in conversations and meetings with civil society. The report then presents a detailed analysis of the question of annexation, examining the relevant legal frameworks as well as the situation in the Occupied Palestinian Territory, in particular the West Bank, including East Jerusalem.

2. The Special Rapporteur would like once again to highlight that, despite his requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. He most recently requested access to the Occupied Palestinian Territory on 24 April 2018. At the writing of the present report, no reply had been received from the Government of Israel. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights and reminds Israel that he is ready and willing to engage. In addition, he continues to highlight that access to the Occupied Palestinian Territory would play a key role in understanding the fundamental realities of the human rights situation in the territory. The pattern by Israel of non-cooperation with the mandate is a serious concern and contrary to its obligations as a State Member of the United Nations.

3. The present report is based primarily on written submissions as well as consultations with civil society representatives, victims, witnesses, Palestinian government officials and United Nations representatives held in Amman during the Special Rapporteur's annual mission to the region, in June 2018. The Special Rapporteur would like to note that several groups were unable to travel to Amman to meet with him owing to travel restrictions imposed by the Israeli authorities. This was particularly the case with individuals coming from Gaza, and all individuals and organizations based in Gaza were consulted by videoconference as a result.

4. In the present report, the Special Rapporteur focuses on the obligations of Israel under international human rights law and international humanitarian law, as set out in the mandate.[1] The Rapporteur emphasizes that those obligations are by no means limited to Israel and calls upon all actors to ensure respect for international human rights law and international humanitarian law, in accordance with their obligations, noting that violations of those bodies of law by any actor are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation to the Government of the State of Palestine for its full cooperation with the mandate. He also wishes to extend his thanks to all those who travelled to Amman to meet with him and to those who were unable to travel but made written or oral submissions. he further extends his thanks once again to Jordan for its support and for the opportunity to hold meetings in Amman.

6. The Special Rapporteur emphasizes once again his admiration and support for the vital work being done by Palestinian, Israeli and international human rights organizations. That work is indispensable not only to the Rapporteur as he seeks to fulfil his mandate, but also to the broader international community. The efforts of human rights organizations to ensure that accurate and complete information about the situation in the Occupied Palestinian Territory is readily available should not go unacknowledged. As highlighted in the report of the Special Rapporteur to the Human Rights Council in March 2017 (A/HRC/34/70), those organizations often face

[1] As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2.

significant obstacles in carrying out their work, and the Rapporteur notes that those obstacles have only increased and intensified in the intervening years. The Rapporteur calls upon the international community to ensure that the rights of those undertaking this difficult and, in some cases, perilous work are respected and protected and that any attempts to delegitimize or otherwise discredit the work of those organizations is to be condemned.

II. Current human rights situation

7. Since the previous report of the Special Rapporteur to the General Assembly (A/72/556), the human rights situation in the Occupied Palestinian Territory, particularly in Gaza, has only deteriorated. In his statement following his mission to the region in June 2018, the Rapporteur noted that, in his third visit to the region since assuming his role as mandate holder, he was presented with the bleakest picture yet of the human rights situation in the Occupied Palestinian Territory.[2] The key issues raised during the mission included the continued expansion and development of settlements; the proposal of legislation that could formally annex parts of the West Bank; the possible forcible transfer of vulnerable Bedouin communities; the continued existence of a coercive environment in many parts of the West Bank, including East Jerusalem, seen in measures such as checkpoints, closures, residency revocations and movement restrictions; a continued deterioration in nearly all aspects of life in Gaza; and the apparent excessive use of force against protestors in Gaza, resulting in high numbers of deaths and injuries.

8. The present report cannot present a comprehensive overview of all issues of concern owing to space limitations. Instead, the Rapporteur seeks to highlight here several of the most urgent concerns at the time of writing. That discussion will be followed by an in-depth analysis of the question of annexation, examining both the applicable legal framework as well as the current situation in the Occupied Palestinian Territory.

Gaza

9. The humanitarian and human rights situation in Gaza continues to unravel steadily. The electricity crisis that deepened last year has continued with little change, severely restricting Palestinians' access to medical care, education, and livelihoods. Since the start of 2018, residents of Gaza have not had access to more than six hours of electricity per day; most days they have had only four or five hours.[3] In recent months, the United Nations has called repeatedly for emergency fuel to be provided to Gaza in order to prevent a complete and catastrophic breakdown in essential services, particularly after Israel introduced restrictions on the entry of fuel to Gaza.[4]

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[2] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Occupied Palestinian Territory: bleakest picture yet, says UN expert after regional visit", 29 June 2018. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23298&LangID=E.

[3] United Nations, Office for the Coordination of Humanitarian Affairs, Gaza Strip electric supply database, available at www.ochaopt.org/page/gaza-strip-electricity-supply.

[4] See for example, United Nations, Office for the Coordination of Humanitarian Affairs, "Funding for emergency fuel needed immediately to avoid catastrophic breakdown in essential services", 5 September 2018. Available at www.ochaopt.org/content/funding-emergency-fuel-needed-immediately-avoid-catastrophic-breakdown-essential-services; and "Entry of emergency fuel urgently needed to avoid closure of hospitals and overflow of sewage in Gaza streets", 8 August 2018. Available at https://www.ochaopt.org/content/entry-emergency-fuel-urgently-needed-avoid-closure-hospitals-and-overflow-sewage-gaza.

The World Bank has reported that the Gaza economy is current in "free fall", with minus 6 per cent growth in the first quarter of 2018; it cited the blockade as the core issue but noted also other contributing factors, including the significant cuts to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the decision by the Palestinian Authority to cut salaries in Gaza.[5]

Demonstrations and the use of force

10. The demonstrations along the Gaza fence began on 31 March 2018 under the banner of the "Great March of Return", with Palestinians in Gaza calling for their right to return to their homes and for an end to the blockade. Most of the Gaza population comprises Palestinians who have been forcibly expelled from their homes and lands during and after 1948. Gaza has been under a comprehensive land, sea and air blockade for 11 years, with many residents never having had the chance to ever leave Gaza. Access to essential health-care services, education and livelihoods is severely restricted. The unprecedented cuts to the funding of UNRWA, which provides a range of services from medical care to education to protection, will have a devastating impact on the residents of Gaza.[6] In the face of those challenges, residents of Gaza have gathered at the fence between Gaza and Israel each Friday since 30 March, in varying numbers, to protest those conditions.

11. At the time of writing, more than 200 Palestinians had been killed by Israeli security forces in Gaza, 150 of those in the context of demonstrations. Among those killed, 38 were children. On 14 May alone, at least 42 Palestinians were killed in the context of demonstrations, including 6 children.[7] Alongside the high number of fatalities has been an extremely high number of injuries, with more than 21,000 Palestinians wounded, including over 5,300 wounded by live ammunition. Other injuries have been caused by tear gas inhalation, rubber-coated metal bullets, among other things. Also during the reporting period, 1 Israeli was killed and 37 injured.[8] Demonstrations are ongoing and deaths and injuries continue to mount; for example, seven Palestinians, including two children, were killed by Israeli security forces on 28 September 2018.[9] The negative impact of that situation on children cannot be overstated, and despite calls from the international community to ensure respect for the rights of children, they continue to be killed and injured.[10]

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[5] World Bank, "Cash-strapped Gaza and an economy in collapse put Palestinian basic needs at risk", press release, 25 September 2018. Available at www.worldbank.org/en/news/press-release/2018/09/25/cash-strapped-gaza-and-an-economy-in-collapse-put-palestinian-basic-needs-at-risk.

[6] Stephane Dujarric, Spokesman for the Secretary-General, statement for the Secretary-General on United Nations Relief and Works Agency for Palestine Refugees in the Near East, 31 August 2018. Available at www.un.org/sg/en/content/sg/statement/2018-08-31/statement-attributable-spokesman-secretary-general-unrwa.

[7] Jamie McGoldrick, Humanitarian Coordinator for the Occupied Palestinian Territory, statement on Palestinian casualties in the Gaza Strip, 29 September 2018. Available at www.ochaopt.org/content/statement-humanitarian-coordinator-occupied-palestinian-territory-mr-jamie-mcgoldrick and https://www.ochaopt.org/content/fifty-five-palestinians-killed-and-thousands-injured-gaza.

[8] For all figures in this paragraph, see United Nations, Office for the Coordination of Humanitarian Affairs, "Humanitarian snapshot: casualties in the context of demonstrations and hostilities in Gaza", 30 March–4 October 2018. Available at www.ochaopt.org/content/humanitarian-snapshot-casualties-context-demonstrations-and-hostilities-gaza-30-march-4.

[9] McGoldrick, statement on Palestinian casualties in the Gaza Strip.

[10] Jamie McGoldrick, Humanitarian Coordinator in the Occupied Palestinian Territory, James Heenan, Head of OHCHR in the Occupied Palestinian Territory, and Genevieve Boutin, United Nations Children's Fund Special Representative in the State of Palestine, "Children's rights must be put first", joint press statement, 1 August 2018. Available at www.ochaopt.org/content/children-s-rights-must-be-put-first.

12. While the demonstrations have been largely peaceful, incidents have occurred in which Palestinians have thrown Molotov cocktails towards the border or flown burning kites that drop their material on Israeli land, igniting crops. Demonstrators have reportedly attempted to break through the fence between Gaza and Israel. All acts of violence are deplorable and must be condemned. However, serious concerns about the response of Israel to the demonstrations are not alleviated by the fact that some of the demonstrators may have used violent means themselves.[11] The applicable legal framework holds that the test is not the use of violence, but rather whether the law enforcement official faces an imminent threat to life. As the United Nations High Commissioner for Human Rights noted, it is difficult to see how tyre-burning or stone-throwing, or even Molotov cocktails thrown from a significant distance at heavily protected security forces in defensive positions, can be seen to constitute such threat.[12]

13. The Government of Israel has described the demonstrations as a "confrontation campaign" launched by Hamas and has placed the responsibility for the killing of Palestinians by Israeli forces with Hamas.[13] It has also connected the current events in Gaza to the previous escalation of violence in the West Bank, which began in October 2015 and lasted several months, calling the period since 2015 a "wave of terror".[14] The Special Rapporteur notes that, indeed, many of the concerns raised in his 2016 report to the General Assembly (A/71/554), which also addressed the uptick in violence in the West Bank, have only heightened today, in particular the apparent excessive use of force by Israeli security forces. As noted in that report, more than 230 Palestinians were killed in the West Bank, including East Jerusalem, in a roughly one-year period in the context of demonstrations and of attacks or alleged attacks by Palestinians against Israelis (see A/71/554 paras. 9–14). The recent months in Gaza, there have been similarly high numbers of deaths and extremely high numbers of injuries of Palestinians by Israeli forces. The practice of responding with deadly force to demonstrations is greatly at odds with human rights law and with the protected international values of the right to freedom of expression, assembly and association.

14. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, weapons and lethal force should be used only as a last resort and only in cases of imminent threat of death or serious injury. The Principles are informative here, given that Israeli forces along the fence between Israel and Gaza are acting in a law enforcement capacity. Palestinian demonstrators face heavily armed and well-equipped Israeli security forces in defensive positions, often hundreds of metres away. Even in cases in which Palestinians have thrown stones, Molotov cocktails or otherwise approached Israeli soldiers, according to the extensive evidence gathered by a number of human rights organizations and reviewed by the Special Rapporteur, the majority of those incidents did not appear to pose a credible threat to life or risk of serious injury to the heavily armed Israeli forces that would

[11] Sari Bashi, "Don't blame Hamas for the Gaza bloodshed", Human Rights Watch, 22 May 2018. Available at www.hrw.org/news/2018/05/22/dont-blame-hamas-gaza-bloodshed.

[12] OHCHR, "Gaza deaths: Israel must address excessive use of force, Zeid says", 27 April 2018. Available at https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22995&LangID=E.

[13] Israel, Ministry of Foreign Affairs, "Hamas launches confrontation campaign on Israel's border", 6 April 2018. Available at http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Hamas-launches-confrontation-campaign-on-Israels-border.aspx; and Noa Landau, "Netanyahu on Gaza protesters: Israel tried non-lethal methods, but Hamas wants them to die", *Haaretz*, 7 June 2018. Available at www.haaretz.com/israel-news/netanyahu-on-gaza-protesters-hamas-wants-them-to-die-1.6156392.

[14] Israel, Ministry of Foreign Affairs, "Wave of terror 2015–2018", 17 October 2018. Available at http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx.

justify the use of deadly force under the relevant human rights law provisions.[15] Indeed, most of those killed were reportedly unarmed and were shot with live ammunition in the back, head or chest.

15. In that context, and more worrying, a message — that was later deleted — on the social media website Twitter from the official account of the spokesperson of the Israel Defense Forces at the start of the demonstrations on 31 March read: "Nothing was carried out uncontrolled; everything was accurate and measured, and we know where every bullet landed."[16] It should be noted that, in the context of an occupation such as that in Gaza, killings resulting from the unlawful use of force may constitute wilful killings, a grave breach of article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). Grave breaches of the Geneva Conventions are categorized as war crimes under article 8 of the Rome Statute of the International Criminal Court.[17]

Access and movement restrictions in the context of demonstrations

16. In addition to the use of force, Israel has responded to the demonstrations by imposing restrictions on movement and access that have had a significant negative impact on the residents of Gaza. As highlighted in my report to the Human Rights Council in March 2018 (see A/HRC/37/75, paras. 36–60), residents of Gaza face serious challenges with respect to the right to health owing to the crumbling infrastructure in Gaza resulting from 11 years of blockade by Israel and its closure of Gaza, as well as delays or denials in the issuance of permits that would allow them to travel outside of Gaza for medical treatment. Those concerns continue at present, and the situation has only been exacerbated by the spike in needs associated with the large numbers of injuries sustained during the demonstrations. In June 2018, the Office for the Coordination of Humanitarian Affairs and the World Health Organization warned of the desperate situation of the Gaza health sector, citing the electricity shortage, cuts in salaries for government employees and shortages of essential medicines as key problems that have weakened the sector in recent years and months.[18] In addition to the high number of injuries, the complexity of treating bullet wounds has been raised as a key issue that will impact longer-term recovery of many patients.[19]

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[15] See for example, Human Rights Watch, "Israel: Gaza killings unlawful, calculated", 3 April 2018. Available at www.hrw.org/news/2018/04/03/israel-gaza-killings-unlawful-calculated; B'Tselem, "If the heart be not callous, on the unlawful shooting of unarmed demonstrators in Gaza", position paper, April 2018. Available at www.btselem.org/publications/summaries/201804_if_the_heart_be_not_callous; Al Mezan Center for Human Rights, "Child killed and 112 protestors injured on the 16th Friday of demonstrations", press release, 15 July 2018. Available at www.mezan.org/en/post/23073/Child+Killed+and+112+Protesters+Injured+on+the+16th+Friday+of+Demonstrations.

[16] Hazem Balousha and Oliver Holmes, "The Gaza Strip mourns its dead after protest is met with bullets", *The Guardian*, 31 March 2018. Available at www.theguardian.com/world/2018/mar/31/weary-angry-gazans-bury-dead-after-deadly-border-conflict.

[17] See also, Fatour Bensouda, Prosecutor, International Criminal Court, statement regarding the worsening situation in Gaza, 8 April 2018. Available at www.icc-cpi.int//Pages/item.aspx?name=180408-otp-stat, noting that "violence against civiliaas — in a situation such as the one prevailing in Gaza — could constitute crimes under the Rome Statute of the International Criminal Court … as could the use of civilian presence for the purpose of shielding military activities."

[18] United Nations, Office for the Coordination of Humanitarian Affairs, "Gaza's health sector struggles to cope with massive influx of casualties amid pervasive shortages", Humanitarian Bulletin: Occupied Palestinian Territory, May 2018. Available at www.ochaopt.org/content/gaza-s-health-sector-struggles-cope-massive-influx-casualties-amid-pervasive-shortages.

[19] Médecins sans frontiers, "Gaza: a long ordeal awaits hundreds of wounded from the march of return", 8 August 2018. Available at www.msf.org/gaza-long-ordeal-awaits-hundreds-wounded-march-return.

17. Given the volume of patients and their complex needs, many have required medical care not available in Gaza. However, difficulties in obtaining permits in a timely manner, or at all, have been a serious concern. In the case of gunshot wounds, quick treatment is often essential to avoid amputation. In one case, two injured young men aged 17 and 20 were denied exit permits, which resulted in each having to undergo a leg amputation. The Israeli authorities cited their participation in the demonstrations as the reason for denying the exit permits.[20] On 8 April, the human rights organizations Adalah and Al Mezan filed a petition on behalf of the patients with the Israeli High Court. While awaiting the decision of the Court, both patients underwent amputations. On 16 April, the Court ruled that one of the men, Yousef Al-Kronz, should be permitted to leave Gaza for additional surgery as he was at risk of having his second leg amputated.[21] Denial of access to medical treatment is not justifiable and is in violation of the obligations of Israel under human rights law as well as its obligations as an occupying power under international humanitarian law.

18. In addition to restrictions on the travel of individuals, Israel has in recent months imposed restrictions on the entry of essential goods to Gaza. Israeli authorities have clearly stated that those measures are undertaken in response to the flying of burning kites into Israeli territory that has resulted in significant damage to Israeli crops.[22] That has resulted in severe shortages of, among other things, emergency fuel. As noted above, the United Nations has on several occasions warned of the possibility of total collapse of essential services if fuel is not allowed to enter Gaza. The fact that the entire Gaza population could be subject to an even more serious degradation of conditions owing to the actions of a few points to the imposition of collective punishment, which is prohibited under article 33 of the Fourth Geneva Convention.

Accountability

19. At the onset of the demonstrations, the Secretary-General called for independent and transparent investigations into the incidents.[23] That call has been echoed on numerous occasions by the Office of the United Nations High Commissioner for Human Rights and a number of mandate holders of the special procedures of the Human Rights Council, including the Special Rapporteur.[24] Given the centrality of accountability to any efforts to achieve peace and prevent future violations of international law, the Special Rapporteur commends the decision by the Human Rights Council in its resolution S-28/1 to create an independent commission of

[20] Jack Khoury, "Israel denied passage for medical treatment to two Palestinians who protested in Gaza — and their legs were amputated", *Haaretz*, 12 April 2018. Available at www.haaretz.com/israel-news/two-gazan-protesters-legs-amputated-after-israel-denies-entry-1.5993161.

[21] Al Mezan Center for Human Rights, "Israel Supreme Court rules on Adalah-Al Mezan petition: Israel must let Palestinian youth wounded by Israeli gunfire at protests leave Gaza for urgent care", press release, 16 April 2018. Available at www.mezan.org/en/post/22707.

[22] BBC, "Israel closes main Gaza goods crossing in response to arson attacks", 10 July 2018. Available at www.bbc.com/news/world-middle-east-44777297.

[23] Farhan Haq, Deputy Spokesman for the Secretary-General, statement for the Secretary-General on the situation in Gaza, 30 March 2018. Available at www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza.

[24] OHCHR, "UN human rights experts condemn killings of Palestinians near Gaza fence by Israeli security forces", 17 April 2018; "UN rights experts condemn Israel's response to Palestinian protests in Gaza", 6 April 2018; "Press briefing note on Gaza and Guatemala", 17 April 2018; "Gaza deaths: Israel must address excessive use of force, Zeid says", 27 April 2018. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22950, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22924, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22925&LangID=E, and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22995&LangID=E, respectively.

inquiry as an important means of seeking to end impunity and achieving more effective redress for victims than has been realized to date.

20. In that resolution, the Council decided to dispatch the commission, noting a "systematic failure by Israel to carry out genuine investigations in an impartial, independent, prompt and effective way, as required by international law, into the violence and offences against Palestinians by the occupying forces, and to establish judicial accountability for its actions in the Occupied Palestinian Territory, including East Jerusalem."

21. In April 2018, Israeli Defense Minister Avigdor Lieberman said that no investigations would be launched into the killings along the Gaza border.[25] Subsequently, in August, Brigadier General Sharon Afek decided to open an investigation into the deaths of two young Palestinians: a 15-year-old who, according to video footage, was shot in the back near the fence in March; and an 18-year-old who was shot during demonstrations near the fence in July.

22. In April, Israeli and Palestinian human rights organizations filed two petitions with the Israeli High Court demanding that it assess the legality of the Israel Defense Forces open-fire regulations.[26] In May, the Court issued its decision, relying heavily on the State's assessment of the facts, and — without examining the rules of engagement of the Israel Defense Forces — deferred legal questions to the Forces' internal investigation mechanism.[27] The High Court's decision has raised serious concerns, including among legal scholars, about the permissiveness of the judicial scrutiny of the Israeli military's conduct, as it seems to accept arguments by the State that justify the potential use of lethal force against demonstrators that do not pose any threat to life or serious injury.[28] That raises additional concerns about the possibility of achieving accountability within the military justice system.

23. The existence of a system in which cases can be brought to the Military Advocate General is necessary but not sufficient for achieving accountability. There must also be evidence that the system itself works in an independent, impartial and transparent manner, in line with international standards. The Rapporteur echoes the High Commissioner's sentiment that failures by the Military Advocate General undermine current and future efforts to achieve accountability for those incidents by "creating the misconception that cases were effectively addressed through the military justice system" (see A/HRC/37/41, para. 14).

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[25] Loveday Morris and Hazem Balousha, "No inquiry into Gaza border deaths, says Israeli defense minister", *Washington Post*, 1 April 2018. Available at www.washingtonpost.com/world/middle_east/no-inquiry-into-gaza-border-deaths-says-israeli-defense-minister/2018/04/01/f2562ca2-352d-11e8-b6bd-0084a1fb66987_story.html?utm_term=.cdab7561d170.

[26] Adalah, "Adalah and Al Mezan petition supreme court: order Israeli army to stop using snipers, live ammunition against Gaza protests" 24 April 2018. Available at www.adalah.org/en/content/view/9488; Gisha, "HCJ petition: revoke open-fire regulation permitting live fire on demonstrators not endangering human life", 15 April 2018. Available from http://gisha.org/updates/8804; and Yesh Din, "HCJ petition: revoke rules of engagement permitting live fire at non-dangerous demonstrators near Gaza fence", 15 April 2018. Available at www.yesh-din.org/en/hcj-petition-revoke-rules-engagement-permitting-live-fire-non-dangerous-demonstrators-near-gaza-fence/.

[27] Yesh Din, "HCJ petition: revoke rules of engagement permitting live fire at non-dangerous demonstrators near Gaza fence".

[28] See for example, Eliav Lieblich, "Collectivizing threat: an analysis of Israel's legal claim for resort to force on the Gaza border", Just Security, 16 May 2018. Available at www.justsecurity.org/56346/collectivizing-threat-analysis-israels-legal-claims-resort-force-gaza-border/; and Elena Chachko and Yuval Shany, "The Supreme Court of Israel dismisses a petition against Gaza rules of engagement", Law Fare, 26 May 2018. Available at www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement.

III. Annexation

24. The annexation of territory is strictly prohibited in modern international law. Indeed, that prohibition has acquired the status of a jus cogens norm in international law, meaning that it is accepted as a fundamental principle of law by the international community, for which no exception or derogation is permitted.[29] Territorial conquest and annexation are now regarded as intolerable scourges from darker times, because they invariably incite devastating wars, political instability, economic ruin, systematic discrimination and widespread human suffering.[30] Although annexation has yet to be completely eradicated in the modern world, its occurrence has become much more infrequent since the creation of the United Nations, with the international community refusing to recognize annexation claims in many cases.

25. Nevertheless, annexation remains a burning issue in the Israeli-Palestinian conflict. Israel, the occupying power, has twice formally annexed occupied territory under its control: East Jerusalem (in 1967 and 1980) and the Syrian Golan Heights (in 1981).[31] Its refusal to relinquish the two territories in the face of widespread condemnation by the international community has contributed to regional instability and severely limited the efficacy of international law. Furthermore, throughout the years of occupation since the June 1967 war, Israel has continuously entrenched its de facto annexation of the West Bank by imposing intentionally irreversible changes to occupied territory that are proscribed by international humanitarian law: the establishment of 230 settlements, populated by more than 400,000 Israeli settlers; the physical and political enclosure of the 2.6 million West Bank Palestinians; the extension of Israeli laws to the West Bank and the creation of a discriminatory legal regime; the unequal access to natural resources, social services, property and land for Palestinians in the occupied West Bank; and the explicit statements by a wide circle of senior Israeli political leaders calling for the formal annexation of parts or all of the West Bank. Those annexation trends have only intensified over the past two years. As one Israeli human rights lawyer recently stated, "[the Government of Israel] is peeling away the last remnants of loyalty to the notion of the occupation as temporary and to any obligation to negotiate with the Palestinians. The goal is clear: a single State containing two people, only one of which has citizenship and civil rights."[32]

26. Accordingly, the focus of the second half of the present report is devoted to exploring the trends of the de jure annexation of East Jerusalem by Israel and its de facto annexation of the West Bank, their incompatibility with international legal norms and their foreclosing of the right to self-determination by the Palestinian people.

A. Annexation in modern international law

27. After 1945 and the bitter experience of decades of global wars fuelled by ambitions of territorial expansionism, the international community resolved to forbid war, conquest and annexation as instruments of national policy. The Charter of the United Nations, in its Article 2 (3) and (4), requires States Members of the United Nations to settle their differences by peaceful means, with the corollary that

[29] Rainer Hofmann, "Annexation", in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2013), paras. 21 and 38.

[30] Robert Yewdall Jennings, *The Acquisition of Territory in International Law* (Manchester, United Kingdom of Great Britain and Northern Ireland, Manchester University Press, 1963, 2017).

[31] These de jure annexations have been condemned by the Security Council in its resolutions 478 (1980) and 497 (1981).

[32] Michael Sfard, "Israel and annexation by lawfare", *The New York Review of Books*, 10 April 2018. Available at www.nybooks.com/daily/2018/04/10/israel-and-annexation-by-lawfare/.

annexation had now become illegal.[33] The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (the Declaration on Friendly Relations), adopted unanimously in 1970 by the General Assembly, declares that no territorial acquisition or special advantage resulting from the threat or use of force shall be recognized as legal. From 1967, the Security Council has expressly affirmed the inadmissibility of the acquisition of territory by war or force on at least eight occasions.[34] The inadmissibility principle has also been endorsed repeatedly by the General Assembly and the Human Rights Council.[35] The International Court of Justice stated in 2004 that this principle has achieved the status of customary international law.[36] Leading international legal scholars are widely in agreement that the prohibitions against conquest and annexation are cornerstones of modern international law.[37] Annexation is incompatible with the foundational principles of the laws of occupation, which stipulate that the occupying power's tenure is inherently temporary, not permanent or even indefinite, and that it must rule the territory as a trustee for the benefit of the protected population under occupation and not for its own aggrandizement.[38] Annexation is also profoundly in breach of the fundamental right to self-determination, an *erga omnes* obligation under international law.[39]

B. Effectiveness of the prohibition

28. Recently, scholars have affirmed that the legal and diplomatic prohibition of conquest and annexation has had a significant dampening effect on its occurrence in the post-1945 period. In the period 1816–1928, until the signing of the General Treaty for Renunciation of War as an Instrument of National Policy (the Briand-Kellogg Pact), there had been an average of 1.21 conquests per year, with the acquisition of an average of 295,486 square kilometres annually. Between 1928 and 1948, during the initial period following the Pact, only a slight decline in the patterns of conquest and annexation were evident: there was an average of 1.15 conquests per year, involving an average of 240,739 square kilometres. However, since 1948, with the emergence of the United Nations and the consolidation of the prohibitions within international law, there has been a dramatic decline: only 0.26 conquests per year, amounting to an annual average of 14,950 square kilometres. Most importantly, many of the modern conquests and annexations have not been recognized by States. Thus, while war may still sometimes produce a military victory, it does not often yield lasting legal victories.[40]

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[33] Hofmann, "Annexation", para. 14.

[34] The latest is Security Council resolution 2334 (2016).

[35] Most recently in General Assembly resolution 72/14 and Human Rights Council resolution 37/36.

[36] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 87.

[37] For example: Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge, United Kingdom, Cambridge University Press, 2017), p. 372. "No territorial acquisition resulting from the threat or use of force shall be recognized as legal"; Jennings, *The Acquisition of Territory in International Law*, p. 56: "Conquest as a title to territorial sovereignty has ceased to be a part of the law."

[38] Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge, Cambridge University Press, 2018), p. 399: "The normative framework limits the occupant's powers in terms of both material scope and time, forbidding it to act in a manner intended to generate permanent results … the occupation does not confer title to the territory; … it is to be managed as a trust; and … it is temporary."

[39] *Legal Consequences of the Construction of a Wall, I.C.J. Reports 2004*, paras. 88 and 155.

[40] Oona Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (New York: Simon and Schuster, 2017), chap. 13.

C. Definition of de facto annexation

29. "De jure annexation" is widely recognized in international law as the formal declaration by a State that it is claiming permanent sovereignty over territory that it had forcibly acquired from another State.[41] In contrast, "de facto annexation" has been generally employed as a descriptive term to illustrate the actions of a State in the process of consolidating — often through oblique and incremental measures — the legislative, political, institutional and demographic facts to establish a future claim of sovereignty over territory acquired through force or war, but without the formal declaration of annexation.

30. Given the broad international consensus respecting the illegality of annexation, acquisitive States in modern times that wish to annex territory have a strong incentive to obfuscate the reality of their plans.[42] Typically, they will work assiduously to create a series of "facts on the ground" in order to buttress a sovereign claim, while postponing a formal declaration because of the fear of a diplomatic and political reaction by the international community. With that in mind, the Special Rapporteur submits that, if the prohibition against annexation is to be coherent and effective, particularly in the context of the occupied Palestinian territory, then the liberal purposes of international law should ensure that the absolute prohibition against annexation extends to those incremental, yet substantive, measures being taken by a State in violation of international humanitarian law to lay the ground for a future claim of sovereignty over conquered and/or occupied territory.[43]

31. Relying upon legal reasoning developed by Omar Dajani, the Rapporteur proposes that the following factors should be employed to assess whether a State engaging in de facto annexation has crossed the tipping point in illegal annexation:

(a) Effective control. The State is in effective control of territory that it forcibly acquired from another State;[44]

(b) Exercises of sovereignty. The State has taken active measures that are consistent with permanency and a sovereign claim over parts or all of the territory or through prohibited changes to local legislation, including the application of its domestic laws to the territory, demographic transformation and/or population transfer, the prolonged duration of the occupation and/or the granting of citizenship;[45]

(c) Expressions of intent. This would include statements by leading political leaders and/or State institutions indicating, or advocating for, the permanent annexation of parts or all of the occupied territory;[46]

(d) International law and direction. The State has refused to accept the application of international law, including the laws of occupation, to the territory

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[41] Hofmann, "Annexation", para. 1.

[42] Omar M. Dajani, "Israel's creeping annexation" (2017), *American Journal of International Law*, vol. 111, p. 52.

[43] Ibid. p. 53, "... while a formal act of annexation is powerful evidence of intent, the lack of one is by no means dispositive."

[44] Ibid, p. 52, citing an element of the older test in international law as to when an annexation had been accomplished.

[45] Ibid, p. 53, "... it is difficult to conceive of a measure more indicative of a state's intent to annex territory — short of a declaration to that effect — than its establishment of civilian settlements upon that territory". In addition, the application by the occupying power of its domestic laws to the occupied territory is incompatible with the laws of occupation and is prohibited precisely to discourage annexation, see Ben-Naftali Sfard and Viterbo, *The ABC of the OPT*.

[46] Dajani, "Israel's creeping annexation", p. 52, citing an element of the older test in international law as to when an annexation had been accomplished. Also see Shaw, *International Law*, p. 371, "intention to annex was a crucial aspect of the equation."

and/or is failing to comply with the direction of the international community with respect to the present and future status of the territory.[47]

32. The essence of the above test is to determine whether, on the facts of each particular conquest and/or occupation, the State has displayed a pattern of behaviour sufficiently consistent with annexation and inconsistent with the right to self-determination and the fundamental principles of occupation, including temporality, trusteeship and good faith (see A/72/556). If so, then the State would be in violation of the international prohibition against annexation, even in the absence of a formal declaration.

33. With that legal foundation in mind, we can proceed to examine the conduct of Israel, the occupying power, with respect to East Jerusalem and the West Bank.

D. Annexation and East Jerusalem

34. Several weeks after the military occupation of East Jerusalem and the West Bank — among other territories — by Israel in the June 1967 war, Israel formally extended its law and administration to East Jerusalem and 28 surrounding Palestinian villages in the West Bank, creating a much-enlarged Jerusalem municipality. The 1967 annexation absorbed not only the 6,400 dunams of East Jerusalem — previously ruled by Jordan — but also 65,000 dunams in the West Bank, attaching them to the 38,000 dunams belonging to West Jerusalem. In General Assembly resolutions 2253 (ES-V) and 2254 (ES-V), the international community immediately and overwhelmingly rejected that de jure annexation. Israel refused to comply with those resolutions and began to establish permanent demographic, structural and institutional facts on the ground to consolidate its sovereignty claim.

35. Subsequently, in July 1980, the Israeli Knesset enacted the quasi-constitutional Basic Law: Jerusalem, Capital of Israel, which proclaimed that Jerusalem, "complete and unified", was the capital of Israel. Again, the international community, this time through the Security Council, condemned the annexation in the strongest terms and declared that the Basic Law was a violation of international law and a threat to peace and security. Furthermore, in its resolution 478 (1980), the Council determined that all legislative and administrative measures and actions taken by Israel, the occupying Power, that had altered or purport to alter the character and status of Jerusalem were null and void and must be rescinded.

36. The United Nations, by Council resolution 2334 (2016) and Assembly resolution ES-10/19, has recently reaffirmed those declarations, establishing the illegality of the formal Israeli annexation of East Jerusalem.

37. As part of its continuing efforts to ensure that its de jure annexation of East Jerusalem is irreversible, Israel has over the past five decades extended its national laws and civil authority to the occupied section of the city; issued numerous declarations of permanent sovereignty; transformed the physical features and historic character of East Jerusalem; moved some of its national institutions, including the Ministry of Justice; and embarked upon an intensive programme of creating and

[47] Dajani, "Israel's creeping annexation", p. 53, "an occupant's refusal to accept the law of occupation's applicability would seem probative for drawing this conclusion [acting as a sovereign] — as would a refusal to comply with duties under that law that relate specifically to distinguishing the rights of an occupant from those of a sovereign."

expanding Israeli settlements.[48] Two trends in particular are evident, the objective of both being the perpetuation by Israel of its annexation of East Jerusalem.

38. First, the consistent policy of Israel since 1967 has been to secure an overwhelming Israeli Jewish majority in Jerusalem, achieved through settler implantation and demographic gerrymandering. Early in the occupation, Israeli national and municipal leaders adopted two official policy objectives aimed at sustaining permanent Israeli annexation of East Jerusalem: to expand the size of the city, and thereby increase its absorptive capacity for Israeli Jewish settlement;[49] and to establish a targeted "demographic balance" of 70 per cent Jewish Israelis and 30 per cent Palestinians in the city.[50] Later, in the 2000s, those leaders added a third policy objective: to prevent the development of any national Palestinian institutions in Jerusalem and thereby dampen Palestinian nationalist sentiment. Notwithstanding the best efforts of Israel since, none of those objectives have been fully successful. No State has formally recognized the claim by Israel to its sovereignty over East Jerusalem. Demographically, Palestinian Jerusalemites in 2016 constituted 38 per cent of the city's population, up from 28 per cent in 1980.[51] Furthermore, a 2018 poll indicated that 97 per cent of Palestinian East Jerusalem residents strongly objected to the idea that Israel should maintain its annexation of East Jerusalem.[52] Nonetheless, since 1967, Israel has taken a number of substantial steps to entrench its sovereign claim over East Jerusalem, as described below.

39. A total of 15 official Israeli Jewish settlements have been built within the expanded boundaries of East Jerusalem since 1967, with a total population of 210,000 Israeli settlers. Those settlements constitute a grave breach under international humanitarian law.[53] The purpose of the settlements is to create such a large critical mass of settlers that no future Government of Israel would be politically able either to oppose them or uproot them. One disfiguring effect of the settlements, together with the separation wall and the surrounding Israeli settlements just outside of the current municipal boundaries, has been to sever East Jerusalem — the centre of Palestinian life — from the West Bank, thus significantly eroding their economic, social, familial and political interdependency.[54] Most recently, the Jerusalem municipality has permitted Israeli settlers to dispossess Palestinian Jerusalemites in the Sheikh Jarrah and Silwan neighbourhoods, resulting in frequent friction and violence.[55]

40. In addition, the laws and national authority of Israel apply throughout East Jerusalem, although in a manner that systemically discriminates against the

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[48] Prime Minister Ehud Barak stated in November 2000, "maintaining our sovereignty over Jerusalem and boosting its Jewish majority have been our chief aims, and toward this end Israel constructed large Jewish neighbourhoods in the eastern part of the city, which house 180,000 residents, and large settlements on the periphery of Jerusalem, like the city of Ma'aleh Adumim and Givat Ze'ev." See http://mfa.gov.il/MFA/PressRoom/2000/Pages/Address%20by%20PM%20Barak%20on%20the%20Fifth%20Anniversary%20of%20th.aspx.

[49] Bimkom — Planners for Planning Rights, *Trapped by Planning: Israeli Policy, Planning and Development in the Palestinian Neighbourhoods of East Jerusalem* (2014).

[50] B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem* (1995).

[51] Jerusalem Institute for Policy Research, *Statistical Yearbook of Jerusalem*, No. 32 (2018), table III/4.

[52] Udi Shaham, "Poll: 97% of east J'lem residents oppose Israeli control over entire city", *Jerusalem Post*, 11 May 2018. Available at www.jpost.com/Arab-Israeli-Conflict/Poll-97-percent-of-east-Jlem-residents-oppose-Israeli-control-over-entire-city-556147.

[53] Security Council resolution 478 (1980).

[54] See www.btselem.org/jerusalem.

[55] Civic Coalition for Palestinian Rights in Jerusalem, *Forced Eviction in Occupied East Jerusalem* (forthcoming).

Palestinian community in the city.[56] One prime example is the planning laws.[57] Since 1967, Israel has expropriated over 38 per cent of the land base of East Jerusalem exclusively for Israeli settlements and has zoned only 15 per cent (amounting to 8.5 per cent of Jerusalem as a whole) for the residential needs of Palestinian Jerusalemites. That has created a housing and planning crisis: only 8 per cent of all building permits issued by the Jerusalem municipality are granted for Palestinian neighbourhoods in East Jerusalem, despite the fact that the population density in Palestinian neighbourhoods is twice that of Israeli neighbourhoods.[58] According to the Association for Civil Rights in Israel, the local and district planning authorities in Israel have not advanced a single outline plan for the Palestinian neighbourhoods for the past decade, resulting in a planning freeze.[59] A disquieting consequence of that planning discrimination has been the demolition of hundreds of Palestinian homes ordered by Israeli authorities over the past decade that had been constructed without the nearly impossible to obtain building permits. In total, 123 housing units were destroyed in 2016 alone, and more than 15,000 Palestinian homes (in which 100,000 Palestinians reside, representing one third of the Palestinians in East Jerusalem) remain under the threat of demolition.[60] Many Palestinians in East Jerusalem are also unable to register their land ownership with State authorities, resulting in insecure tenure and the diminished value of their properties.[61] The planning crisis is part of a broader long-term neglect by the Jerusalem municipality of Palestinian East Jerusalem, which — in comparison to West Jerusalem — endures much higher poverty rates, a much smaller allocation of the municipal budget spending, poor social and health services and crumbling public infrastructure.[62] Although East Jerusalem was forcibly annexed by Israel, its Palestinian residents remain excluded from the relative prosperity of the rest of the city.

41. Furthermore, the legal status of almost all Palestinian Jerusalemites under Israeli law is as a "permanent resident", which is the same legal status given to foreign nationals in Israel. Palestinian permanent residents pay taxes and are entitled to receive public benefits and services but, unlike citizens, they possess no secure right to remain in Jerusalem. While under the laws of occupation the Palestinian Jerusalemites are "protected persons", Israel does not recognize that status. Since 1967, Israel has revoked the residency status of more than 14,500 East Jerusalemite Palestinians; since 1995, Palestinian residents of East Jerusalem have to prove that their "centre of life" is in the city in order to retain their permanent resident status or risk losing their status and thus their ability to return to their homes in East Jerusalem. Not having permanent resident status prevents Palestinians from other parts of the Occupied Palestinian Territory from legally residing or even visiting Jerusalem. In addition, Israeli laws severely restrict the right to family reunification by denying

[56] See generally, Society of St. Yves, *Everyone Pays the Price: Case Study of Jerusalem* (2017).

[57] Bimkom, *Trapped by Planning*.

[58] See www.btselem.org/jerusalem. This was measured by population per room.

[59] Association for Civil Rights in Israel, "East Jerusalem: facts and figures 2017", 21 May 2017. Available at https://law.acri.org.il/en/2017/05/24/east-jerusalem-facts-and-figures-2017/.

[60] Ir Amim and Bimkom — Planners for Planning Rights, *Deliberately Planned: A Policy to Thwart Planning in the Palestinian Neighbourhoods of Jerusalem* (2017).

[61] "East Jerusalem is the double-edged sword of Israel's capital", *Haaretz*, 10 April 2018. Available at www.haaretz.com/opinion/editorial/east-jerusalem-is-the-double-edged-sword-of-israel-s-capital-1.5988771.

[62] United Nations Conference on Trade and Development (UNCTAD), *The Palestinian Economy in East Jerusalem: Enduring Annexation, Isolation and Disintegration*, UNCTAD/GDS/APP/2012/2 (New York and Geneva, 2013).

many Palestinian Jerusalemites the ability to extend permanent resident status to their spouses and children who do not have recognized residency in Jerusalem.[63]

42. The other prominent trend is the more aggressive approach taken by the Israeli political leadership in recent years to counter the growing Palestinian demographic presence in East Jerusalem and to bolster the claim by Israel to sovereignty over East Jerusalem. That trend has taken two forms. First, the route of the wall in the 2000s around Jerusalem has deliberately placed a number of Palestinian neighbourhoods on the West Bank side of the wall. And second, the Israeli Knesset has adopted several pieces of legislation, and is considering several other proposed statutes, which seek to ensure that its annexation of East Jerusalem becomes irreversible.

43. The construction of the wall by Israel — which Israel states was built as a security barrier but which also stretches deep inside the occupied territory in many areas — has not followed the boundaries of the expanded Jerusalem municipality. Around Jerusalem, it absorbed some West Bank territory within the wall while unilaterally placing several large Palestinian Jerusalem neighbourhoods, including Kufr Aqab and Shu'fat, outside of the wall. Those Palestinian Jerusalemites living beyond the wall — estimated to comprise 120,000–140,000 persons — officially still live within Jerusalem, still have their "permanent resident" status, still pay taxes to the Municipality and some of whom work in Jerusalem by crossing Israeli checkpoints to enter the city.[64] However, the Israeli authorities have largely abandoned those neighbourhoods. Even in comparison to the negligible municipal services provided to the Palestinian neighbourhoods within the wall, the excluded neighbourhoods are almost entirely forgotten: they live without basic social services and infrastructure, such as water, garbage collection, road building and sewage; there is a serious shortage of educational and welfare institutions; high crime rates persist; they suffer from housing shortages and overcrowding; and, without an effective system for granting permits, virtually all buildings are constructed without official permission.[65] The Minister for Jerusalem Affairs in the Israeli cabinet, Ze'ev Elkin, proposed in October 2017 that the detached Palestinian neighbourhoods be removed from the Jerusalem municipality and placed under a new council administration.[66] It is an inescapable conclusion that the route of the separation wall around Jerusalem — which includes all the Israeli settlements in East Jerusalem as well several nearby West Bank Israeli settlements, while excluding approximately one third of the Palestinian Jerusalemites — has been designed for demographic reasons to maximize the Israeli population in Jerusalem while seeking to substantially reduce the city's Palestinian presence.[67]

44. Recent legislatives initiatives at the Israeli Knesset have also aimed at consolidating Israeli sovereignty over East Jerusalem and resetting the "demographic balance" in the city.[68] Two significant initiatives in particular stand out, as described below.

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[63] Civic Coalition for Palestinian Rights in Jerusalem, *Israel's Occupation: 50 Years and Counting* (2018).

[64] Association for Civil Rights in Israel, "East Jerusalem: facts and figures 2017".

[65] Rachel Kushner, "'We are orphans here': life and death in East Jerusalem's Palestinian refugee camp", *New York Times*, 1 December 2016. Available at www.nytimes.com/2016/12/01/magazine/we-are-orphans-here.html.

[66] Nir Hasson and Jonathan Lis, "Israeli Minister to push plan aimed at reducing number of Arabs in Jerusalem", *Haaretz*, 29 October 2017. Available at www.haaretz.com/israel-news/.premium-israeli-minister-proposes-plan-to-reduce-number-of-arabs-in-jerusalem-1.5461071.

[67] Al-Haq, "A legal analysis of bills and legislation to revoke the permanent residencies of Palestinians and alter the status of Jerusalem", legal brief, 7 March 2018. Available at www.alhaq.org/en/wp-content/uploads/2018/03/LegalBriefJerusalem.pdf.

[68] Ir Amim, "Destructive unilateral measures to redraw the boarders of Jerusalem" (January 2018).

45. **The Basic Law: Jerusalem, Capital of Israel**. In January 2018, the Knesset amended the Basic Law to stipulate that any proposal to transfer "the authority related to the area of Jerusalem" in final status negotiations "to a foreign body" could only be authorized if a super-majority of 80 (out of the 120) members of the Knesset approved. The Basic Law had previously provided that such a transfer could occur with a simple majority vote of the Knesset. The amendment would make it more difficult to obtain Knesset support for any peace agreement that would recognize Palestinian sovereignty over East Jerusalem. The amendment also creates the legislative authority to redraw the municipal boundaries of Jerusalem to exclude the detached Palestinian neighbourhoods that are on the West Bank side of the wall.

46. **The "Greater Jerusalem" bill**. Throughout 2017, the Knesset considered a legislative proposal that would have incorporated five West Bank Israeli settlements — Beitar Illit, Ma'aleh Adumin, Giv'at Ze'ev, Gush Etzion and Efrat — as autonomous submunicipalities of the city, while maintaining local autonomy for the settlements. That "soft annexation" bill would have added 120,000 Israeli settlers to Jerusalem, thus enhancing the city's Jewish majority. The bill was sponsored by MK Yoav Kish (Likud), who stated that it would "weaken the Arab hold on the capital" and "enshrine the Jewish majority."[69] The bill was subsequently tabled by the Israeli Prime Minister, citing the need to "coordinate" its legislative agenda on that legislation with the United States of America.[70]

47. At the time of writing, the Palestinian Bedouin village of Khan al-Ahmar in the West Bank, just east of Jerusalem, is being threatened by Israeli authorities with demolition. In the opinion of the Special Rapporteur, and others, the resulting forced eviction of the residents of Khan al-Ahmar would undoubtedly lead to forcible transfer, a war crime under international law.[71] A motivating reason for the removal of the village would to be clear Palestinian communities from the 12-square-kilometre area known as the "E1 corridor", thereby securing territorial continuity between Jerusalem and the large West Bank settlement of Ma'ale Adumim. The realization of longstanding plans by Israel to develop that area through the construction of more Israeli settlements would serve several annexation purposes: (a) to consolidate Israeli territorial sovereignty and demographic domination in the greater Jerusalem area; (b) effectively to sever the remaining territorial contiguity between the northern and southern West Bank, thus extinguishing any faint remaining hope of a viable two-State solution; and (c) to isolate further Palestinian East Jerusalem from the West Bank.[72]

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[69] Yossi Verter, "Israeli ministers set to vote annexing West Bank settlements to Jerusalem", *Haaretz*, 26 October 2017. Available at www.haaretz.com/israel-news/ministers-to-vote-on-annexing-west-bank-settlements-to-jerusalem-1.5460310.

[70] Jonathan Lis and Amir Tibon, "Netanyahu: Israel must coordinate Jerusalem annexation bill with U.S.", *Haaretz*, 29 October 2017.

[71] Amnesty International, "Israel/OPT: demolition of Palestinian village of Khan al-Ahmar is cruel blow and war crime", 30 September 2018. Available at www.amnesty.ca/news/israelopt-demolition-palestinian-village-khan-al-ahmar-cruel-blow-and-war-crime; Noa Landau, "European Parliament warns: eviction, demolition of Khan al-Ahmar would be war crime", *Haaretz*, 13 September 2018. Available at https://www.haaretz.com/israel-news/.premium-european-parliament-warns-eviction-demolition-of-khan-al-ahmar-would-be-war-crime-1.6469916.

[72] Zena Agha, "Israel's annexation crusade in Jerusalem: the role of Ma'ale Adumim and the E1 corridor", Al-Shabaka, 26 March 2018. Available at https://al-shabaka.org/briefs/israels-annexation-crusade-in-jerusalem-the-role-of-maale-adumim-and-the-e1-corridor/.

E. Annexation and the West Bank

48. Israel has yet to declare its formal annexation of any part of the occupied West Bank, as it presently lacks international political support from any quarter for such a move.[73] Its official position to the rest of the world is that, while it denies that the West Bank (which it refers to as "Judea and Samaria") is occupied and it has rejected the applicability of the Fourth Geneva Convention, it remains willing to negotiate its future status with the Palestinians.[74] However, in practice, Israel has taken multiple steps consistent with establishing a sovereign claim over the West Bank since shortly after the occupation began in June 1967, and those steps have escalated significantly in recent years.

49. The first Israeli civilian settlements in the West Bank, initially camouflaged as military camps, were established in the summer of 1967.[75] Since then, Israel has built and incentivized approximately 230 settlements throughout the West Bank, inhabited by more than 400,000 settlers. No country creates civilian settlements in occupied territory unless it has annexationist designs in mind, which is why the international community has designated the practice of settler-implantation as a war crime.[76] The political purpose of the Israeli settlement enterprise has always been to establish sovereign facts on the ground and to obstruct Palestinian self-determination. The Drobles plan of 1978, which formulated the motivation for the then-fledgling settlement enterprise, declared: "State land and uncultivated land must be seized immediately in order to settle the areas between the concentration of minority population [i.e., the Palestinians in the West Bank] and around them, with the object of reducing to the minimum the possibility for the development of another Arab state in these regions."[77]

50. During five decades of occupation, Israel has steadily entrenched its sovereign footprint throughout the West Bank.[78] The infrastructure of the territory — the sewage connections, the communication systems and the electrical network — has been completely integrated into the domestic system of Israel. The West Bank water system, with its plentiful mountain aquifers, have been owned since 1982 by Mekorot, the national water company, with the benefits flowing primarily to Israel.[79] The highway network, which before 1967 had been primarily a north-south system, has been reconfigured as an east-west system to connect the settlements with each other and with Israeli cities, thereby disrupting Palestinian transportation.[80] The West Bank economy is subject to a single customs union agreement with Israel, enabling the more powerful economy to dominate and flourish, while the weaker economy withers through de-development and dependence.[81] The natural resources of the West Bank

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[73] Noa Landau and others, "White House strongly denies as 'false' Netanyahu's claims of talks with U.S. on annexing West Bank settlements", *Haaretz*, 12 February 2018. Available at www.haaretz.com/israel-news/.premium-netanyahu-settlement-annexation-being-discussed-with-u-s-1.5810741.

[74] See www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx.

[75] Idith Zertal and Akiva Eldar, *Lords of the Land: The War over Israel's Settlements in the Occupied Territories, 1967–2007* (New York, Nation Books, 2007).

[76] Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[77] David Kretzmer, "Settlements in the Supreme Court of Israel" (2017), 111 *American Journal of International Law*, vol. 111 (2017), p. 42.

[78] "Regularization law", in Ben-Naftali, Sfard and Viterbo, *The ABC of OPT*.

[79] See www.btselem.org/water.

[80] Dajani, "Israel's creeping annexation", p. 54.

[81] UNCTAD, "Report on the UNCTAD Assistance to the Palestinian People: developments in the Economy of the Occupied Palestinian Territory", TD/B/64/4, September 2017.

are largely controlled by Israel and primarily exploited for its benefit.[82] Israeli legislation and laws have been extended by the Israeli military commander to West Bank settlers on a personal/territorial basis, while a disfigured version of occupation law, without many of its protections and guarantees, applies to the Palestinians.[83] The allocation of "State land" in the West Bank that is assigned for any use has been given almost exclusively to Israeli settlements (99.76 per cent), despite the fact that settlers make up only 12 per cent of the population in the West Bank.[84]

51. Most significantly, Israel exercises full civil and security control over Area C of the West Bank, which comprises more than 60 per cent of the territory. A remnant of the lifeless Oslo Process, Area C has been administered by Israel as an exclusive land base for its West Bank settlements. The World Bank has noted that 68 per cent of Area C is designated for Israeli settlements, 21 per cent for closed military zones and 9 per cent for nature reserves.[85] In the 1 per cent of Area C that remains for the approximately 180,000–300,000 Palestinian habitants, the Israeli Civil Administration has imposed a highly restrictive planning regime that makes permit application approval for Palestinian residential and commercial construction virtually impossible.[86] While Israeli settlers enjoy the same full range of legal rights and economic freedoms as Israelis living in Israel, Palestinians in Area C lack essential community infrastructure and are faced with a strangled economy, ubiquitous military checkpoints, limited access to their natural resources and a steady rejection of almost all of their submitted master plans,[87] all of which amounts, according to the United Nations, to a coercive environment that is forcing Palestinians to leave.[88] A 2015 amendment to a 2003 military order regarding unauthorized buildings allows the Commander of the Central Command to evict entire Palestinian communities in Area C without the previous need to acquire demolition orders for each structure.[89]

52. What civil society organizations once called the "creeping Israeli annexation" of the West Bank has now been relabelled "leaping annexation"[90] and "occup'annexation".[91] The Israeli political leadership has perceived that the current international environment — particularly its relationship with the present United states administration — is conducive to its aspirations to solidify its permanent domination over the West Bank, notwithstanding the lack of support for formal annexation. As a result, there has been a flurry of soft-annexation legislation since early 2017, which appears to be laying the foundation for hard-annexation legislation in the future. In a recent editorial, *Ha'aretz*, the leading liberal daily in Israel, stated that the Government has been practising legal annexation through its recent

[82] Shawan Jabarin, "Business and human rights in Palestine: a case study on the illegal exploitation of Palestinian natural resources", Al-Haq, 30 January 2014.

[83] Yehuda and others, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank* (Association for Civil Rights in Israel, 2014).

[84] Americans for Peace Now, "Land allocation in the West Bank — for Israelis only", July 2018.

[85] World Bank, *West Bank and Gaza: Area C and the Future of the Palestinian Economy* (Washington, D.C., 2013).

[86] See www.btselem.org/topic/planning_and_building.

[87] Ahmad El-Atrash, "Israel's stranglehold on Area C: development as resistance", Al-Shabaka, 27 September 2018. Available at https://al-shabaka.org/commentaries/israels-stranglehold-on-area-c-development-as-resistance/.

[88] Tovah Lazaroff, "UN: Israel policies forcing Palestinians to leave Area C of the West Bank", *Jerusalem Post*, 27 July 2016. Available at www.jpost.com/Arab-Israeli-Conflict/UN-Israel-policies-forcing-Palestinians-to-leave-Area-C-of-the-West-Bank-462569.

[89] Peace Now (Settlement Watch), "Mentality of annexation: changes in the interpretation of the laws regarding occupation", January 2018.

[90] Americans for Peace Now, "From creeping to leaping: annexation in the Trump-Netanyahu era", April 2018.

[91] 11.11.11, "Occup'annexation: the shift from occupation to annexation in Palestine", Brussels, 2017.

application of "more and more Knesset laws to the West Bank while erasing the Green Line," resulting in two different and unequal legal systems for the two peoples residing in the territory. "This phenomenon has a name," it stated, "and Israel will no longer be able to renounce reality and deny to the international community that it is an apartheid State, with all that this implies."[92]

53. Over the past two years, the Israeli Knesset has either enacted or considered a number of statutes that extend Israeli law to the West Bank or lay the foundation for some form of future annexation.[93] Among the most significant statutes, bills and other initiatives comprising that recent legislative trend are described below.

54. The Settlement Regularization in "Judea and Samaria" Law allows for the retroactive legalization of outposts built on private Palestinian land. While it offers compensation to Palestinian landowners, it denies them any right to property restoration. It was passed by the Knesset in February 2017 but remains unimplemented pending the resolution of a petition to the Israeli High Court by a number of human rights organizations challenging its legality. At the High Court, the Government of Israel argued that the Knesset is not subject to international law and is the source of legal authority in the occupied Palestinian territory. The Israeli Attorney General, while opposing the law, has stated that existing laws already provide for the legalization of Israeli constructions on private Palestinian land in the West Bank (see A/HRC/37/43 paras. 16–17).

55. The Higher Education Law applies the jurisdiction of the Israeli Council for Higher Education, which governs post-secondary institutions in Israel, to academic institutions in the West Bank settlements. It thereby grants the same academic status to those institutions (notably, Ariel University based in the settlement of Ariel) as for all other Israeli universities. The Law, which was enacted in February 2018, is an illustration of the direct application of domestic Israeli law to the occupied territory, which is both forbidden under international law and a clear step towards annexation.

56. The Jewish Nation-State Law is a quasi-constitutional Basic Law, which means that it takes precedence over ordinary Knesset legislation. Adopted in July 2018, it proclaims that the Jewish people alone have the right to self-determination in Israel. One prominent concern about the new Basic Law — based on the use of the term "Land of Israel" — is that it may be applied to East Jerusalem and the West Bank to justify the protection of Israeli settlements and other annexational trends. Article 7 of the Basic Law states: "the State views the development of Jewish settlements as a national value and will act to encourage and promote its establishment and consolidation."

57. The Administrative Affairs Court Law (amendment), adopted in July 2018, enlarges the jurisdiction of the Israeli Administrative Affairs Court to assume a very broad authority to adjudicate petitions by West Bank Palestinians on a range of issues, including planning and construction issues in Area C, barring individuals from certain areas of the West Bank and the issuance of travel permits. It removes the authority over those subject areas from the Israeli High Court. The primary criticism of the amendment is that it expands the jurisdiction of a domestic Israeli court to include Area C, which becomes another piece in the step-by-step extension of Israeli law to the occupied West Bank.

58. The Israeli political leadership has become much more uninhibited over the past two years in expressing out loud what the actions of the Government of Israel have

[92] "The Knesset wants apartheid", *Haaretz*, 1 June 2018. Available from www.haaretz.com/opinion/editorial/the-knesset-wants-apartheid-1.6137367.

[93] Foundation for Middle East Peace, "Israel's 'creeping annexation' policies — tables", September 2018, provides an invaluable overview of recent annexation steps taken by the Knesset. See also https://goo.gl/c9DK3L.

been proclaiming for years. Annexation is in the air, and intention is now being openly expressed in words as well as in deeds. One significant illustration of the changing environment was the unanimous vote on 31 December 2017 by the 1,000-member central committee of the ruling Likud party to support a non-binding resolution to formally annex the West Bank. The resolution called upon Likud's elected officials "... to allow free construction and to apply the laws of Israel and its sovereignty to all liberated areas of Jewish settlement in Judea and Samaria."[94] In addition, in recent months, a number of Israeli cabinet ministers have openly embraced the formal annexation of parts or all of the West Bank:

- Prime Minister Benjamin Netanyahu: "This is the land of our fathers, this is our land. We are here to stay, forever ... There will be no uprooting of communities in the Land of Israel."[95]
- Minister for Technology Ofir Akunis: "All land of Israel is ours, and this cannot be disputed or be divided. The concept of settlements blocs is no longer relevant because there are no Arabs to negotiate with anymore."[96]
- Minister for Education Naftali Bennett: "Today, the Israeli Knesset moved from heading toward establishing a Palestinian State to heading toward sovereignty in Judea and Samaria ... The outpost regulation bill is the tip of the iceberg in applying sovereignty."[97]
- Minister for Transportation Yisrael Katz: "Today I will propose at the security cabinet that we pass the 'Greater Jerusalem Law' that includes extending Israeli sovereignty to the surrounding communities of greater Jerusalem: Ma'ale Adumim, Givat Ze'ev, Beitar Illit and the Etzion Bloc, while joining them to the city of Jerusalem and strengthening it by adding territory and Jewish population."[98]
- Minister for Justice Ayelet Shaked: "I think we should apply the Israeli law to the Israeli towns and villages [settlements], and to normalize the life there, and in the far future, to apply the Israeli law in Area C [the occupied West Bank]. In Area C, there are a half-million Israelis [settlers] and 100,000 Palestinians; they will have citizenship with full rights, of course, like myself. And that Area A and B will be part of a confederation with Gaza, with Jordan."[99]

[94] Chaim Levinson, "Netanyahu's party votes to annex West Bank, increase settlements", *Haaretz*, 1 January 2018. Available at www.haaretz.com/israel-news/.premium-netanyahu-s-party-votes-to-annex-west-bank-increase-settlements-1.5630099.

[95] Breaking Israel News, "Netanyahu: Israel will stay in Judea and Samaria forever", 29 August 2017. Available at www.breakingisraelnews.com/93927/netanyahu-israel-will-stay-judea-samaria-forever/.

[96] Peter Beaumont, "On a rocky ridge over Ramallah, settlers put their faith in Trump", *The Guardian*, 11 February 2017. Available at www.theguardian.com/world/2017/feb/12/israel-settlers-put-their-faith-in-trump-netanyahu-visit-white-house.

[97] Jewish Link of New Jersey, "Jewish Home's Bennett Says Outpost Bill Paves Way for Annexation of Judea and Samaria", 8 December 2016. Available at www.jewishlinknj.com/world-us/16063-jewish-home-s-bennett-says-outpost-bill-paves-way-for-annexation-of-judea-and-samaria.

[98] Times of Israel, "Challenging Netanyahu, senior minister floats annexation of Jerusalem-area settlements", 22 January 2017. Available at www.timesofisrael.com/challenging-netanyahu-senior-minister-floats-annexation-of-jerusalem-area-setlements/.

[99] Interview with Ayelet Shaked, Justice Minister of Israel, AIPAC Policy Conference, Washington, D.C., 7 March 2018. Available from http://hamodia.com/2018/03/07/exclusive-interview-justice-minister-ayelet-shaked/.

- Minister for Public Security Gilad Erdan: "Now is the time to extend sovereignty to areas on which there is no controversy [that they will remain part of Israel in a final status agreement]".[100]

- Minister for Jerusalem Affairs Ze'ev Elkin: "Halas ['enough' in Arabic] with the story of two States. There is no other option but the State of Israel, certainly between the Jordan [River] to the [Mediterranean] sea there will be one State."[101]

- Deputy Defence Minister Eli Ben-Dahan: "We have to focus on the main issue. We are in Judea and Samaria because this is our land, and we are here so that we will never leave it. Sovereignty must be applied in Judea and Samaria as soon as possible."[102]

- Minister for Housing Yoav Galant: "Strategically speaking, the Jordan Valley is the eastern security zone of the State of Israel, the mountainous area is the holding area, and the Jerusalem-Ashdod-Hadera and Dan is the vital living space in which more than 5 million Israelis live ... We must continue to keep Yehuda, Shomron, and the Jordan Valley under full control and to strengthen settlement in these areas."[103]

59. Those statements of political intent, together with the colonizing facts on the ground of Israel, its legislative activity and its refusal to adhere to its solemn obligations under international law or to follow the direction of the international community with respect to its 51-year-old occupation, have established the probative evidence that Israel has effectively annexed a significant part of the West Bank and is treating that territory as its own. While Israel has not yet declared formal sovereignty over any parts of the West Bank, the Special Rapporteur submits that the strict prohibition against annexation under international law applies not only to a formal declaration, but also to those acts of territorial appropriation by Israel that have been a cumulative part of its efforts to stake a future claim of formal sovereignty over the occupied Palestinian territory.

IV. Conclusion

60. A fundamental tenet of modern international law is the legal maxim *ex turpi causa non oritur actio*: a lawbreaker cannot benefit from his or her illegal act.[104] In 1967 and again in 1980, the international community clearly stated that the annexation by Israel of East Jerusalem breached international law and was null and

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[100] Marissa Newman, "Build in settlements to punish Palestinians, top minister urges", Times of Israel, 13 February 2017. Available at www.timesofisrael.com/build-in-settlements-to-punish-palestinians-top-...inister-urges/?link_id=12&can_id=beb87055f757f06618a29df863283e75&source=email-what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting&email_referrer=what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting&email_subject=what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting.

[101] Tovah Lazaroff, "Elkin: start preparing for one million settlers in the West Bank", *Jerusalem Post*, 14 November 2017. Available at www.jpost.com/Israel-News/Elkin-Start-preparing-for-one-million-settlers-in-the-West-Bank-514251.

[102] Israel National News, "The quiet war against terrorism continues", 30 May 2002. Available at www.israelnationalnews.com/News/News.aspx/24370.

[103] The Yeshiva World, "Galant: to keep Yehuda, Shomron and the Jordan Valley", 22 March 2018. Available at www.theyeshivaworld.com/news/israel-news/1495709/galant-to-keep-yehuda-shomron-and-the-jordan-valley.html?utm_source=General+Mailing+List&utm_campaign=bd366ef597-EMAIL_CAMPAIGN_2018_03_30&utm_medium=email&utm_term=0_586030c60d-bd366ef597-82754635.

[104] Lasa Oppenheim, *International Law: A Treatise*, 8th ed., vol. 1, *Peace* (London, Longmans, Green and Company, 1955), p. 574.

void.[105] It has also spoken decisively about the illegality of the Israeli settlement enterprise,[106] which is the political and demographic engine that has transformed the Israeli occupation into an annexation. However, those repeated condemnations of Israeli annexationist actions have lacked any meaningful steps by the international community to insist upon accountability. Despite the ongoing record of Israel of non-compliance with the directions of the international community, it has rarely paid a meaningful price for its defiance, and its appetite for entrenching its annexationist ambitions in East Jerusalem and the West Bank has gone largely unchecked. A deep-rooted problem at the heart of the conflict has not been the clarity of international law, but the unwillingness of the international community to enforce what it has proclaimed. As one academic stated succinctly: "The problem is not international law per se, but its lack of enforcement; that in the Middle East, international law is closer to power than to justice."[107] Nothing could more effectively refute that judgment than for the international community to act on the overwhelming evidence before it and insist that Israel either fully annul its annexations and relinquish its occupation, or be prepared to bear the full consequences of accountability for its mocking of international law.

V. Recommendations

61. **The Special Rapporteur recommends that the Government of Israel comply fully with international law and bring a complete end to its 51 years of occupation of the Palestinian territory. He further recommends that the Government take the following measures immediately:**

(a) **End the blockade and closure of Gaza, lift all restrictions on imports and exports as well as on the movement of people, and facilitate full access to medical care, consistent with genuine Israeli security concerns;**

(b) **Ensure that regulations governing the use of force for Israeli security forces are in strict compliance with international standards, with particular attention to the use of deadly force;**

(c) **Ensure accountability for alleged violations of international humanitarian law and international human rights law by Israeli security forces, with particular attention to the demonstrations in Gaza;**

(d) **Take measures to address concerns raised about the independence, impartiality and transparency of the military justice system.**

62. **With respect to concerns related to the annexation of territory, the Special Rapporteur recommends that Israel:**

(a) **Comply with all relevant resolutions of the Security Council and the General Assembly with respect to East Jerusalem and the West Bank and relinquish any claim of sovereignty over the territory;**

(b) **Ensure freedom of movement within the Occupied Palestinian Territory, including between Gaza and the West Bank, including East Jerusalem;**

(c) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**

[105] Security Council resolution 2334 (2016), General Assembly resolution 72/14 and Human Rights Council resolution 37/36.

[106] Security Council resolution 2334 (2016).

[107] Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891–1949* (London: Pluto Press, 2009), p. 4.

(d) Pursue a good faith approach to the administration of the West Bank, including East Jerusalem and Gaza as occupied territory, adhering to the tenets of international human rights law and international humanitarian law, with a view to bringing the occupation to a complete conclusion within a reasonable time period and enabling Palestinian self-determination.

63. **The Rapporteur further recommends that the international community:**

(a) In line with common article 1 to the Geneva Conventions, take all measures necessary to respect and ensure the respect by Israel, and all other relevant parties, of the solemn obligations of international humanitarian law;

(b) Seek to hold Israel to the international standards by which all States are to be held, including the prohibition on annexation;

(c) Ensure full accountability of Israeli political and military officials who are responsible for grave breaches of international law in the occupied Palestinian territory;

(d) Commission a United Nations study on the legality of the Israeli annexation and continued occupation of the Palestinian territory.